

**REMARKS**

Applicant has amended Claims 1, 7, 8 and 18, and added new Claim 20. Accordingly, Claims 1 through 19 are currently pending in this application.

Applicant respectfully requests reconsideration of the present application in view of the above amendments and the following remarks.

**I. SUMMARY OF OFFICE ACTION**

The Examiner rejected Claims 1-7, 10-14, 16 and 18 under 35 U.S.C. §102(e), as being anticipated by U.S. Pat. No. 6,488,665 to Severin et al.

The Examiner rejected Claims 15, 17 and 19 under 35 U.S.C. §103(a), as being unpatentable over U.S. Pat. No. 6,488,665 to Severin et al.

The Examiner rejected Claims 8, 9, 15, 17 and 19 under 35 U.S.C. §103(a), as being unpatentable over U.S. Pat. No. 6,488,665 to Severin et al. in view of U.S. Pat. No. 5,306,270 to Macartney et al.

**II. TRAVERSAL OF THE ART REJECTIONS**

**A. Traversal of the Rejections Under 35 U.S.C. §102**

It is respectfully submitted that amended Claims 1 and 18 are not anticipated by the art of record. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631; 2USPQ2d 1051,1053 (Fed. Cir. 1987); MPEP 2131.

Applicant's independent Claims 1 and 18 now expressly recite that the piercing means is integrated into the applicator head. Accordingly, Applicant's claimed invention comprises a two-piece construction consisting of an applicator head having an integrated piercing means and a container.

In contrast with Applicant's claimed invention, Severin discloses an applicator device having three distinct pieces, namely a container 14, a container connector 24, and a gel applicator 26. Although Severin's container connector acts as a bridge between the container and the gel applicator, it's primary function is to pierce the cover over the container thereby releasing the gel stored within the container. (It should be mentioned that Severin initially describes his applicator device as consisting of a container 14 and a formulation dispenser 16; however, the formulation dispenser is comprised of the aforementioned container connector and gel applicator.)

Another important structural difference between Applicant's claimed invention and the device disclosed in Severin is that Applicant's applicator head is manipulated with respect to the container in order to pierce the barrier at the mouth of the container, while Severin manipulates the gel applicator with respect to the connector.

Applicant claims a piercing means integrated into the applicator head while Severin discloses the use of a separate container connector that houses the piercing means. In other words, Severin requires two pieces in order to accomplish the same task as Applicant's applicator head having an integrated piercing means. Since Severin does not disclose each and every element claimed by Applicant, it cannot anticipate Applicant's independent Claims 1 and 18 or any claim that depends directly or indirectly from these independent claims.

**B. Traversal of the Rejections Under 35 U.S.C. §103**

In order to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to modify the reference or to combine the teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all claim limitations. MPEP 2143.

Severin does not teach or suggest Applicant's two-piece applicator device nor does it teach or suggest an applicator head having an integrated piercing means. As such, Severin cannot make obvious Applicant's claimed invention.

Not only is Applicant's two-piece construction structurally different than the applicator device disclosed in Severin, it has important advantages in form and function. Since Applicant's claimed device has less pieces, it is easier, quicker and cheaper to manufacture. All important aspects from a marketing standpoint.

By having only two pieces, there is only one physical connection in the final assembly of Applicant's applicator device – between the applicator head and the container. Severin requires two physical connections in the final assembly – between the applicator head and the container connector, and between the container connector and the container. Since there is only one physical connection to Applicant's device there is less chance that the substance stored in the container will leak, less chance that a user can incorrectly assemble the final device, and the final device can be assembled in less time.

Since Severin does not suggest or teach the important features disclosed by Applicant, it cannot make obvious Applicant's Claims 1 and 18, or any claim that depends directly or

indirectly from Claims 1 or 18 (2 through 17, 19 and 20).

Macartney et al. (U.S. Patent No. 5,306,270) was cited to show a particular cap for sealing the container. (Applicant is unsure why the Examiner included Claims 15, 17 and 19 in this rejection since they do not refer to a cap. Moreover, the Examiner does not even expressly refer to these three claims in detail when explaining the rejection.) As such, Macartney does not teach or suggest the two-piece construction or a piercing means integrated into the applicator head as claimed by Applicant in independent Claims 1 and 18. Since Claims 8, 9 15, 17 and 19 depend directly or indirectly from Claims 1 and 18, the combination of Severin and Macartney do not teach or suggest each and every element claimed by Applicant. Therefore, the combination of Severin in view of Macartney cannot make obvious any of Applicant's claims.

**C. Miscellaneous**

The amendments to Claims 7 and 8 were made to correct the lack of antecedent basis and were not made to traverse a rejection based on art.

**III. CONCLUSION**

Applicant believes he has addressed all issues raised by the Examiner in the outstanding Office Action. Accordingly, Applicant respectfully requests the issuance of a Notice of Allowance for Claims 1 - 20.

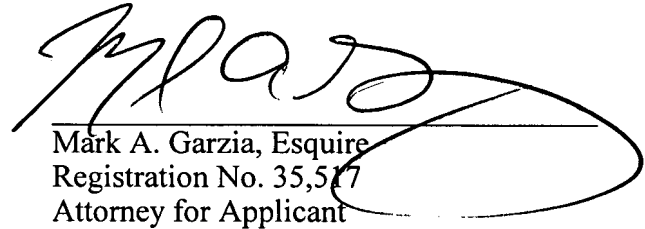
Enclosed is a postage-prepaid, self-addressed postcard for the PTO to acknowledge receipt of this communication.

Should the Examiner have any questions regarding this reply, she is invited to telephone the undersigned in order to expedite the prosecution of the present application.

Respectfully submitted,

Kenneth A. Alley

Date: 12 APRIL 2007

  
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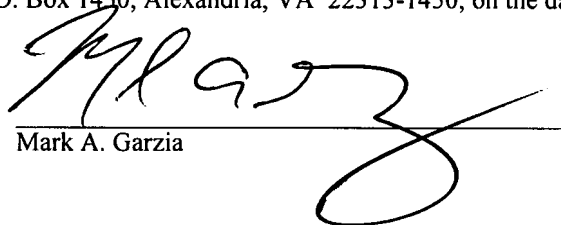
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**CERTIFICATE OF MAILING**

I hereby certify that this communication, along with any paper or fee indicated as being enclosed, are being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Mail Stop AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date indicated below.

April 12, 2007  
Date

  
Mark A. Garzia